SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 570

EDWARD A. HUNT AND ROBERT A. HUNT, CO-PARTNERS TRADING AS HUNT'S MOTOR FREIGHT AND FOOD PRODUCTS TRANSPORT, PETITIONER,

vs.

EDWARD CRUMBOCH, PRESIDENT, JOSEPH E. GRACE, SECRETARY-TREASURER, WILLIAM F. KELLEHER, INTERNATIONAL VICE-PRESIDENT, BUSINESS AGENT AND TRUSTEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 9, 1945.

—5926

[fol. a]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

October Term, 1942

No. 8275

Edward A. Hunt and Robert A. Hunt, Copartners Trading as Hunt's Motor Freight and Food Products Transport, Appellants,

vs.

Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al., Appellees

Before Biggs, Maris and Goodrich, Circuit Judges

Order Granting Leave to Proceed in Forma Pauperis—Filed Feb. 1, 1943

And now, to wit, this 1st day of February, 1943, upon consideration of the petition of the appellants, leave is granted to the appellants to prosecute their appeal in forma pauperis without prepayment of fees and costs and to file in the said cause a typewritten brief and appendix.

By the court.

John Biggs, Jr., U. S. Circuit Judge.

[File endorsement omitted.]

[fol. 1] In United States District Court, Eastern District of Pennsylvania

Relevant Docket Entries

July 23, 1940—Complaint filed.
August 8, 1940—Motion to dismiss complaint filed.
February 3, 1941—Argued sur motion to dismiss.
February 19, 1941—Opinion, Ganey, J., denying motion to dismiss filed.
March 7, 1941—Answer filed.
March 27, 1941—Order to place case on Trial List filed.
February 24, 1942—Trial-witnesses sworn.
February 25, 1942—Trial resumed.

February 26, 1942—Trial resumed.

February 27, 1942 — Trial resumed (continued to 5/11/42).

May 11, 1942—Trial resumed.

May 12, 1942—Trial resumed. Plaintiff rests. Defendants move to dismiss—argument fixed for May 14, 1942.

May 14, 1942—Argued sur motion to dismiss.

October 30, 1942—Opinion, Kalodner, Jr., dismissing complaint filed.

October 30, 1942—Judgment of dismissal filed. 11/2/42 noted, and notice mailed.

December 18, 1942—Plaintiff's notice of appeal filed. 12/18/42 copy to Wm. A. Gray.

December 18, 1942—Plaintiff's affidavit of poverty and order of court granting leave to appeal in forma pauperis filed noted, and notice mailed.

February 26, 1943—Order of court directing clerk to transmit original papers to U. S. Circuit Court of Appeals filed. 2/26/43 noted and notice mailed.

Circuit Court of Appeals

February 1, 1943—Notice of appeal filed.

February 1, 1943—Petition for leave to prosecute appeal in forma pauperis filed.

February 1, 1943—Heard on petition for leave to prosecute, etc. Coram, Biggs, Maris & Goodrich, J.J.

February 1, 1943—Order allowing appellants to prosecute appeal in forma pauperis filed.

January 31, 1944—Brief for appellees and appendix filed.

October 15, 1944—Brief for appellants filed.

[fol. 2] IN UNITED STATES DISTRICT COURT

COMPLAINT

1. The jurisdiction of this Court is based upon the Act of Congress of July 2, 1890 (15 USCA) Sec. 1 et seq.), known as the Sherman Act, which declares illegal every combination or conspiracy in restraint of trade or commerce among the several States. Said jurisdiction is also based upon the Act of Congress of October 15, 1914 (15 USCA sec. 15), known as the Clayton Act, which entitles

any person, firm or corporation to have injunctive relief against threatened loss or damage by violation of the so-called "Anti-Trust" laws of the United States, prohibiting, among other things, combinations and conspiracies in restraint of trade and commerce among the several states or with foreign commerce.

2. The plaintiffs are copartners who trade under the trade names of Hunt's Motor Freight and Food Products Transport, with their principal place of business at Philadelphia, Pennsylvania. For a long period of time prior to the time of filing this Complaint they have been engaged in the business of hauling produce and foodstuffs in interstate commerce. They are the holders of a certificate issued by the Interstate Commerce Commission (Docket No. MC 59793, dated February 2, 1938) and have a permit issued by the Pennsylvania Public Utility Commission (No. A51462, dated May 31, 1938).

3. The defendant, Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America (for the sake of brevity hereinafter referred to as Union) is an unincorporated association of drivers and helpers engaged in "over-the road hauling" and is affiliated with the American Federation of Labor. It is affiliated with numerous locals and subsidiary unions situated throughout the United States, each of which represents a separate branch or class [fol. 3] of employees engaged in and about the loading and hauling of produce by trucks. Its main office is located at 105 Spring Garden Street, Philadelphia, Pennsylvania. This action is brought against the said Union and its officers as appears hereinafter mentioned.

4. The individual defendants are Edward Crumboch, William F. Kelleher, John Fisher, Joseph Billington and Raymond Cohen, who at the time of the happening of the events hereinafter set forth and at the present time were and are members and officers of the defendant Union and were active actors of the acts complained of by the plaintiffs herein.

5. The plaintiffs for a period of approximately fourteen (14) consecutive years have operated under contracts, both written and oral, with The Great Atlantic & Pacific Tea

Company (for the sake of brevity hereinafter referred to as A. & P.), by the terms of which the plaintiffs hauled and transported merchandise for the said A. & P. in interstate commerce.

6. On February 4, 1939, the plaintiffs had been operating under the terms of a certain agreement in writing between them and the said A. & P. whereby the plaintiffs were hauling merchandise for the said A. & P. in interstate commerce for profit, the term of which contract was to end on March 20, 1939.

7. Prior to February 4, 1939, the said A. & P. entered into an agreement and arrangement with the defendant Union whereby the A. & P. recognized the Union as the bargaining agent for its employees, as a result of which the various contract haulers who were situated as the plaintiffs with the said A. & P. recognized the defendant Union as the bargaining agent for their employees.

8. As a result of the said agreement between the said A. & P. and the defendant Union, all employees of the [fol. 4] various contract haulers similarly situated as the plaintiffs with the said A. & P. were notified that they were required to join and become members of the defendant Union.

9. The various employees of the plaintiffs, composed of truck drivers and helpers, advised the plaintiffs that they were satisfied that the defendant Union act as their bargaining agent. The plaintiffs at all times were ready and willing to negotiate with the defendant Union as the representative and bargaining agent of their employees.

10. At various times during the months of February and March 1939, the plaintiffs and their duly authorized agents called at the office of the defendant Union for the purpose of negotiating for a contract with that Union as the bargaining agent of their employees. The defendant Union refused and continues to refuse to negotiate or discuss negotiations for such a contract with the plaintiffs.

11. On February 1 and 14, 1939, at the request of the defendant Union, groups of employees of other contract haulers then similarly situated with the said A. & P. as the plaintiffs as well as a group of employees of the plain-

tiffs, called at the office of the defendant Union for the purpose of applying for membership in the said Union. At that time and times the defendant Union was accepting as members other applicants who were employees of other contract haulers similarly situated with the A. & P. as the plaintiffs. The defendant Union did accept into membership all employees of other contract carriers who made application for membership, but employees of the plaintiffs were refused admission as members of the said defendant Union on the sole ground that they were employees of the plaintiffs and would not be accepted as members in the defendant Union because they had been and were employed by the plaintiffs.

[fol. 5] . 12. On February 4, 1939, the said A. & P. notified the plaintiffs that it would no longer load its merchandise upon the trucks of the plaintiffs for the purpose of carrying out the terms of the then existing contract. This act was done under the instructions and by threats of the officers of the defendant Union.

13. From and after February 4, 1939, the A. & P. refused to offer any of its merchandise for loading or hauling by the plaintiffs.

14. On March 10, 1939, the plaintiffs received notice in writing from the said A. & P. that their contract was terminated and ended.

15. On February 4, 1939, and March 10, 1939, the services of the plaintiffs to the said A. & P. were entirely satisfactory. The breach of the said existing contract between them and refusal on the part of the said A. & P. to renew the said contract for a further term were solely due to the interference by and acts of the defendants, which acts by the said defendants were part of a conspiracy and combination to destroy the plaintiffs' business in interstate commerce.

16. At the time of the receipt of the said notice of the termination of the said contract with the A. & P., the plaintiffs were the owners and operators of seven (7) automobile trucks and trailers used chiefly in interstate commerce in and about the transportation and hauling of produce and merchandise of the said A. & P. under the terms of their contract with that company. In and about the operation of

the said contract the plaintiffs employed about twenty (20) employees, being truck drivers, helpers, mechanics, and office help. The said automotive equipment used by the plaintiffs in and about their business and which was devoted exclusively to the transportation of merchandise belonging to [fol. 6] the said A. & P. under the terms of their contract with that company, and chiefly in interstate commerce, was of a fair value of Fifteen Thousand Dollars ($15,000.00).

17. As a result of the operations under the terms of the contracts theretofore existing between the plaintiffs and the A. & P. during the year 1939 and various years prior thereto, the plaintiffs had made an average net profit or earnings of approximately Eight Thousand Dollars ($8,000.00) a year.

18. Prior to the time of the interference with the contractual rights and existing contracts of the plaintiffs with the said A. & P., there had been no dispute, disagreement or dissatisfaction existing between the said A. & P. and the plaintiffs. By reason of the satisfactory relations theretofore existing between the plaintiffs and the said A. & P., normally and in normal expectancy the said A. & P. would have offered a contract for renewal upon the same favorable terms to the plaintiffs from year to year. Such contract theretofore had been renewed between the plaintiffs and the said A. & P. for a period of fourteen (14) years, and without such interference on the part of the defendants the plaintiffs would have enjoyed the same rights for a further period of not less than fourteen (14) years. Such natural and normal expectancy of the continuance of the contractual and business relations between the plaintiffs and A. & P. was terminated and the said A. & P. was caused to commit a breach of its existing contract with the plaintiffs and caused to refuse to renew the contractual relations between it and the plaintiffs by the unlawful acts and interference of the defendants. These unlawful acts of the defendants were part of an unlawful conspiracy between and among them to interfere with the normal conduct of the business of the plaintiffs in interstate commerce and to control move- [fol. 7] ments of produce and merchandise that theretofore had been hauled and transported by the plaintiffs in interstate commerce. By and because of the unlawful acts of the said defendants the plaintiffs were deprived of their liveli-

hood; their rights under the said contract and contracts were destroyed; and the opportunity of obtaining renewal of their contracts of employment with the said A. & P. was destroyed and removed to their irreparable damage. Said right and rights were of a fair value of One Hundred Twelve Thousand Dollars ($112,000.00).

19. On or about November 6, 1939, the plaintiffs entered into an agreement in writing with one Sterling Supply Corporation, of Philadelphia, Pennsylvania, under the terms of which they agreed to haul various merchandise belonging to the said Sterling Supply Corporation in interstate commerce. Under the terms of the said agreement the plaintiffs did transport and haul merchandise belonging to the said Sterling Supply Corporation in interstate commerce until February 12, 1940.

20. On the said February 12, 1940, the plaintiffs were notified by Sterling Supply Corporation that it could no longer offer any of its merchandise to the plaintiffs for the purpose of transportation and hauling; that it had been notified by the defendant Union that the plaintiffs would not be recognized by the Union nor would their employees be accepted for membership by the Union; that the Sterling Supply Corporation must stop using the plaintiffs' services under the threat of trouble that would be caused to the said Sterling Supply Corporation by the said defendant Union and its officers and members.

21. As a result of the said continued interference and repeated threats of and by the said defendant Union and its duly authorized agents, the said Sterling Supply Corporation did refuse thereafter to offer any of its merchandise [fol. 8] to the plaintiffs for transportation and hauling in spite of the said contract, to the irreparable loss and damage of the plaintiffs.

22. In furtherance of the said unlawful conspiracy to interfere with and destroy the business of the plaintiffs in interstate commerce, the defendant Union and the individual defendants instructed and directed the various members of the Union that none of them might or could accept employment as a truck driver or helper with the plaintiffs; caused an employee of the plaintiffs who was a member of the defendant Union to terminate his employment with the

plaintiffs; and by violence, force and arms, removed and destroyed a membership card of an employee of the plaintiffs who had become a member of the Union but who had failed to inform the Union that he had been in the employ of the plaintiffs.

23. The said acts and actions of the defendants are the result of an unlawful and illegal combination and conspiracy to prevent and destroy the business of the plaintiffs in interstate commerce. The said acts of the defendants violate the provisions of the Sherman Act and Clayton Act. Said acts and actions by the defendants have been done willfully, maliciously, with the intent and purpose to interfere with and control movements of merchandise in interstate commerce, to destroy the rights of the plaintiffs under existing contracts in interstate commerce and to deprive the plaintiffs of an opportunity to obtain other contracts in interstate commerce, thereby depriving the plaintiffs of an opportunity to earn a livelihood in interstate commerce and destroying the value of their automotive equipment and good will which they have created in interstate commerce over a period of more than fourteen (14) years.

24. The plaintiffs have been damaged to the present time in the sum of One Hundred Twenty-seven Thousand Dollars [fol. 9] ($127,000.00) and are entitled to recover, therefore, treble damages in the sum of Three Hundred Eighty-one Thousand Dollars ($381,000.00).

Wherefore, the plaintiffs demand:

1. That the defendant Union, its agents and servants and the other defendants herein, be enjoined during the pendency of this action and permanently from violating the Acts of Congress known as the Sherman Act and Clayton Act.

2. That the defendant Union, its agents and servants, and the other defendants herein, be enjoined during the pendency of this action and permanently from interfering with and obstructing and stopping, directly or indirectly, the operation of motor trucks and motor vehicles of the plaintiffs in and about the plaintiffs' business.

3. That the defendant Union, its agents and servants and the other defendants herein, be enjoined during the pendency of this action and permanently from conspiring and combining to obstruct the plaintiffs from engaging in inter-

state commerce and in the operation of their motor trucks and motor vehicles.

4. That the defendant Union, its agents and servants and the other defendants herein, be enjoined during the pendency of this action and permanently from interfering with the loading of merchandise of other persons and parties upon motor trucks and motor vehicles belonging to the plaintiffs, and from instructing members of the Union not to assist or permit the loading of such merchandise upon the motor trucks and motor vehicles of the plaintiffs.

5. That the defendant Union, its agents and servants, and the other defendants herein, be enjoined during the pendency of this action and permanently from making threats to or intimidating other person, firms or corpora-
[fol. 10] tions, and thereby interfering with the plaintiffs in obtaining contracts of employment in interstate commerce and in the use of the said motor trucks and motor vehicles.

6. That the defendant Union, its agents and servants, and the other defendants herein, be enjoined during the pendency of this action and permanently from boycotting the plaintiffs or boycotting and threatening to boycott other persons, firms or corporations who may deal with or enter into contracts with the plaintiffs.

7. That the defendant Union, its agents and servants, and the other defendants herein, be enjoined during the pendency of this action and permanently from interfering with employees of the plaintiffs and refusing to admit such employees into the defendant Union or from doing any thing or act that would prevent such employees from being admitted as members in any recognized labor union for the cause solely that they had been or are in the employ of the plaintiffs.

8. That the defendant Union, its agents and servants, be specifically directed to accept and admit into membership of the said Union any employee or employees of the plaintiffs who are otherwise eligible for such membership and who meet the original qualifications of other applicants for membership into the said defendant Union.

9. That the defendant Union, its agents and servants, and the other defendants herein, be enjoined during the pendency of this action and permanently from interfering

with the right of present members of the said Union to accept employment with the plaintiffs, and that they be specifically directed to grant permission to such of the Union's members presently unemployed, and other members who may desire so to do, to accept employment with the plaintiffs.

[fol. 11] 10. That the defendants, and each of them, be required to pay to the plaintiffs three-fold the damages suffered by the plaintiffs as the consequence of the defendants' acts, together with the cost of this action and a reasonable attorney's fee, and such other damages as the Court may direct.

11. That the plaintiffs have such other and further relief as is just.

[fol. 12] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT

And Now, to wit, this 8th day of August, 1940, come the defendants above named, by their attorney, William A. Gray, and move that the Complaint filed in this cause be dismissed for the following reasons:

1. Lack of jurisdiction over the subject matter.

2. Failure to state a claim upon which relief can be granted.

[fol. 13] In United States District Court for the Eastern District of Pennsylvania

Civil Action

No. 1011

Edward A. Hunt and Robert A. Hunt, Copartners Trading as Hunt's Motor Freight and Food Products Transport

vs.

Edward Crumboch, President, et al., of the Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and all persons forming the total membership of the said Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America,

and

Edward Crumboch, William F. Kelleher, John Fisher Joseph Billington and Raymond Cohen, Individually

Opinion—February 19, 1941

Ganey, J.:

This matter concerns itself with a motion to dismiss the plaintiffs' bill of complaint on two grounds, (one) lack of jurisdiction over the subject matter and (two) failure to state a claim upon which relief can be granted.

[fol. 14] The two reasons being closely inter-related will be treated together. The complaint avers that the jurisdiction of the court is under the Sherman Act of July 2, 1890 and the Clayton Act of October 15, 1914, which entitles any person, firm or corporation to have injunctive relief against threatened loss or damage by violation of the so-called "Anti-Trust" laws of the United States, prohibiting among other things, combinations and conspiracies in restraint of trade and commerce among the several States or with foreign commerce; that it was engaged under the trade name of Hunt's Motor Freight and Food Products Transport, with principal place of business in the City of Philadelphia; that it was engaged in the transportation of merchandise and foodstuffs for The Great Atlantic and Pacific

Tea Company (hereinafter referred to as A. & P.) in solely interstate transportation, and had been so engaged by it for a period of fourteen years; that prior to February 4, 1939 the A. & P. entered into an agreement with the defendant Union whereby the A. & P. recognized the Union as the bargaining agent for its employees; that under instructions and by threats of the officers of the defendant Union, the said A. & P. notified the plaintiffs that it could no longer permit the merchandise to be loaded on the trucks of the plaintiffs for the purpose of carrying out the terms of the then existing contract which was to end on the 20th of March, 1939 unless they were members of the defendant Union; the employees of the plaintiffs, composed of truck drivers and helpers, advised the plaintiffs that they were satisfied that the defendant Union act as their bargaining agent and the plaintiffs were at all times ready and willing to negotiate with the defendant Union as the representative and bargaining agent of its employees; that the em- [fol. 15] ployees of the plaintiffs on several occasions, along with other groups of employees, whose employer was in the service of the A. & P. went to the headquarters of the defendant Union and applied for admission thereto, but while the other groups of employees were admitted into the Union, the employees of the plaintiffs were all denied admission to the Union on the sole ground that they were employees of the plaintiffs; that the A. & P. refused to offer any of the merchandise for loading and hauling after February 4, 1939 and the plaintiffs on March 10, 1939 received notice in writing that its contract was ended; that on or about November 3, 1939 plaintiffs entered into an agreement in writing with the Sterling Supply Corporation of Philadelphia, under which they were to carry merchandise in interstate commerce and they were likewise notified that the Sterling Supply Corporation could no longer offer its merchandise unless its truck drivers and helpers were member- of the defendant Union and accordingly the contract with the Sterling Supply Corporation had to be abandoned; that the conduct of the Union, and members and officers thereof, was an unlawful conspiracy to interfere with and destroy the business of the plaintiffs in interstate commerce; that the said acts and actions of the defendant were done willfully and maliciously and with the intent and purpose to interfere with and control movements of merchandise in interstate commerce, to destroy the rights of

the plaintiffs under existing contracts in interstate commerce, thereby depriving the plaintiffs of an opportunity to earn a livelihood in interstate commerce and destroy the value of their automotive equipment as well as the good will which they have created in interstate commerce for a period of more than fourteen years which amounted to One Hundred Twenty-Seven Thousand Dollars ($127,000.00) injunctive relief was asked to enjoin the Union from interfering with and obstructing the operation of the plaintiffs' trucks and vehicles, from interfering with [fol. 16] the loading of merchandise upon motor vehicles of the plaintiffs engaged in interstate commerce, and from instructing members of the Union not to assist or permit the loading of merchandise upon motor trucks of the plaintiffs, and for damages suffered by the plaintiffs as a consequence of the defendants' acts.

In consideration of the questions here raised by the defendants' motion, we must first definitely limit the scope of our inquiry under the Sherman Act to the factual situation presented by the bill. To begin with, it has long been firmly established by many decisions of the Supreme Court that labor organizations are subject to the Act, when, pursuant to a conspiracy, they engage in unlawful activities which restrain or obstruct the free flow of interstate commerce. Loewe v. Lawler, 208 U. S. 274; Gompers v. Bucks's Stove and Range Co., 221 U. S. 418; Coronada Coal Co. v. United Mine Workers, 268 U. S. 295; United States v. Brims, 272 U. S. 549; Apex Hosiery Company v. Leader, et al., 310 U. S. 469. However, no labor dispute is here involved as defined in the Norris-LaGuardia Act of March 23, 1932, Sec. 13 C: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." There is accordingly no purpose to be served in the consideration of those cases, which concern themselves with injunctive relief in labor disputes under the Clayton Act or the Norris-LaGuardia Act, the latest of which is United States v. Hutcheson et al. [fol. 17] No. 43, filed February 3, 1941. Here no term or condition of employment is in anywise concerned.

Therefore, since the Sherman Act brings within its scope labor organizations and since no labor dispute is here involved, there is presented the simple question of whether a substantial claim is presented, which would give the Court jurisdiction. Levering and Carrigues, et al. v. Morrin, et al., 289 U. S. 103, 105.

The averments of the plaintiffs' bill as hereinabove set forth, and more particularly that in paragraph 18, "These unlawful acts of the defendants were part of an unlawful conspiracy between and among them to interfere with the normal conduct of the business of the plaintiffs in interstate commerce and to control movements of produce and merchandise that theretofore had been hauled and transported by the plaintiffs in interstate commerce," sufficiently set forth a substantial claim which gives the court jurisdiction of the subject matter of the bill. Addyeton Pipe Co. v. United States, 175 U. S. 211, 241-242. The standard or guide is as stated by the Court in Mitchell Woodbury Corporation v. Albert Pick Barth Co., 41 Fed. (2d) 148. "It is sufficient, unless objected to for lack of particularity, if it alleges with substantial certainty that a conspiracy existed, that its purpose was to deprive the plaintiff of its interstate business and thus destroy interstate competition; that there was restraint in interstate competition in consequence of the conspiracy, and that the plaintiff was thereby injured."

On many occasions, the Court has said that not every restraint of trade affecting interstate commerce is within the prohibition of the Sherman Act, and this is so no matter how reprehensible the conduct of the defendants, nor how [fol. 18] violent the methods used in effecting the restraint. United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (First Coronado Case). The rule to be followed is that laid down in the Apex case, supra, which held that the restraints which come within the ambit of the Sherman Act, are those which the Court relied upon to establish the violation in the Second Coronado Case, 268 U. S. 295. In this case, the Court (page 310) held as follows: "The mere reduction in supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and

moving in interstate commerce, or the price of it in the interstate markets, their action is a direct violation of the "Anti-Trust Act." United Mine Workers v. Coronado Coal Co., 259 U. S. 344; United Leather Workers v. Herkert & Neisel Trunk Co., 265 U. S. 457; Industrial Association v. United States, 268 U. S. 64. The averments of the bill show that the defendant Union here by its conduct with the A. & P. whereby it forced the A. & P. to refuse to permit the loading of its merchandise and foodstuffs by the complainant, coupled with its refusal to admit the plaintiffs' employees into the Union, although the plaintiff was willing and anxious that its employees so join, shows a very definite intent to restrain interstate commerce since its intention is "to restrain or control the supply entering and moving in interstate commerce" as is laid down in the Second Coronado Coal Case, supra.

[fol. 19] The amount of the trade restraint is likewise immaterial, although all of the plaintiffs' business was in interstate commerce. The restraint need not affect a reasonably great amount of trade, and it is therefore not the amount of merchandise or traffice affected, but rather the character and extent of the restriction itself. Steers, et al. v. United States, 192 Fed. 1; United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 224; National Labor Relations Board v. Fainblatt, et al., 306 U. S. 601; Apex Hosiery Co., supra.

Counsel in his brief and at oral argument earnestly contended that the defendants' conduct did not constitute a restrainf. The result of the defendants' conduct was as is indicated, to eliminate his business with the A. & P. because his employees were not members of the Union, and then refuse to admit its employees into the Union when wishing to join, thereby destroying his business which was wholly interstate. The restraint here was in the destruction of the business as stated in Sinderup v. Pathe Exchange, 263 U. S. 291, 312: "It is difficult to imagine how interstate trade could be more effectively restrained than by suppressing it, and that, in effect, so far as the exhibitor is concerned, is what the distributors in combination are charged with doing and intending to do".

Accordingly, while as we have indicated, the two grounds for the motion to dismiss are inter-related, lest there be any confusion between the jurisdiction of the Court with

reference to the subject matter and the failure to state a cause of action upon which relief could be granted it is here ruled that since jurisdiction is the power to decide a justiciable controversy and includes questions of law as [fol. 20] well as of fact, that the bill sets forth a substantial claim under the Sherman Act, and so presents a case within the jurisdiction of the Federal Court; further, that there are sufficient averments in the bill, if proven, that a restraint existed, which is interdicted by the Sherman Act. Whether or not the acts complained of fall within or without the Sherman Anti-Trust Law, must wait upon proof as to what the facts and circumstances surrounding the alleged conspiracy complained of actually are; the allegations in the bill have not yet been denied or explained by the defendants, and for the purpose of the motion to dismiss, have been admitted, leaving the case in such a posture that the critical intent and purpose pursuant to which the acts of the defendants were done, cannot be determined. Consolidated Terminal Corp. v. Drivers, Chauffeurs and Helpers, Local Union 639, et al., 33 F. Supp. 645.

Motion to dismiss denied.

[fol. 21] In United States District Court

Answer to Complaint

To the Honorable, the Judges of Said Court:

The defendants, Brotherhood of Transportation Workers, Local 107, and the officers and members thereof named in the bill of complaint, by their attorney, William A. Gray, come and file this their answer to the plaintiff's bill in the above matter, to such part thereof as they are advised is material, reserving to themselves the benefit of any and all errors therein.

1. Defendants deny that this Court has jurisdiction either under the Act of Congress of July 2, 1890 (15 U. S. C. A. 1 et seq.) known as the Sherman Act, or under the Act of Congress of October 15, 1914 (15 U. S. C. A. 15) known as the Clayton Act. Defendants aver that if any jurisdiction exists, it must be based, at least in part, upon the Act of Congress of March 23, 1932 (29 U. S. C. A. 101 et seq.) known as the Norris-LaGuardia Act.

2. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. Admitted.

4. Admitted that Edward Crumboch, William F. Kelleher, John Fisher, Joseph Billington and Raymond Cohen are members and officers of the defendant Union. Denied that these defendants engaged in the conduct complained of by the plaintiffs' bill.

5. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

[fol. 22] 7. It is admitted that prior to February 4, 1939, the said A. & P. entered into an agreement and arrangement with the defendant Union. The said agreement definitely provided that all classes of employees to whom the agreement applied should be members of the Union and that the Company should continue in their employ only members of the Union with paid-up due books. It is also admitted that various contract haulers employed by the said A. and P., who became members of the Pennsylvania Motor Truck Association, entered into similar contracts.

8. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.

10. Denied that at various times during the months of February and March, 1939, or at any other time, the plaintiffs and their duly authorized agents called at the office of the defendant Union for the purpose of negotiating a contract with the Union as the bargaining agent of their employes.

11. Admitted that groups of employes of other contract haulers applied for membership in the Union and were

accepted as such members. Denied that any employes of the plaintiffs made such application and were refused admission as members of the Union on the sole ground that they were employes of the plaintiffs.

12. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 that the said A. and P. notified the plaintiffs that it would no longer load its merchandise upon their trucks. Denied that if such notification was given, it was done as a result of any [fol. 23] instructions or threats made by the officers of the defendant Union.

13. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint.

14. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.

15. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiffs' services were satisfactory to the A. and P. Defendants deny that they caused the breach of or the refusal to renew the contract between plaintiffs and the A. and P. and that they conspired or combined to destroy the plaintiffs' business.

16. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

17. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

18. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiffs' contractual relations with the A. and P. Defendants deny that they have committed any unlawful acts and deny that they conspired to interfere with plaintiffs' interstate business. Defend-

ants deny further that they are in any way responsible for any loss or damage allegedly suffered by plaintiffs.

19. Defendants aver that they are without knowledge [fol. 24] or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint.

20. Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiffs' communications with Sterling Supply Corporation. Defendants deny that they made threats of trouble to Sterling Supply Corporation.

21. Defendants deny that they, or any of them, threatened Sterling Supply Corporation and interfered with its dealings with plaintiffs in any manner.

22. Denied that there existed any unlawful conspiracy between the defendants to interfere with and destroy the plaintiffs' business in interstate commerce. Denied that the Union and the individual defendants instructed and directed the various members of the Union that none of them might or could accept employment as a truck driver or helper with the plaintiffs. Defendants aver, however, that all members of the Union accept employment only with employers who have contracts with said Union. Denied that the defendants caused an employe of the plaintiffs, who was a member of the defendant Union, to terminate his employment with the plaintiffs and by violence and force of arms removed and destroyed a membership card of the employe of the plaintiffs who had been a member of the Union.

23. Defendants deny that any of their acts were the result of an illegal combination or conspiracy to destroy plaintiffs' business in interstate commerce. Defendants deny that their activities violated the provisions of the Sherman Act, the Clayton Act, or any other law of the United States. Defendants deny further that they have committed any acts with the intent or purpose of interfering with interstate commerce and that they have destroyed [fol. 25] plaintiffs' business and that they have deprived plaintiffs of an opportunity to earn a livelihood and that they have destroyed the value of plaintiffs' automotive equipment and good will.

24. Defendants deny that plaintiffs have been damaged in the amount alleged, or in any other amount, and deny that they are entitled to recover any amount.

Wherefore defendants pray that the bill of complaint be dismissed.

And they will ever pray, etc.

[fol. 26] IN UNITED STATES DISTRICT COURT

Statement of Evidence

PLAINTIFF'S EVIDENCE

Robert A. Hunt—direct

N. T. page 7:

ROBERT A. HUNT, having been duly sworn, was examined and testified as follows:

* * * * * * *

N. T. page 8:

* * * * * * *

Q. How long have you and your brother, Edward A. Hunt, been engaged in business as partners?

A. About 18 years.

Q. What business were you and your brother in?

A. In the contracting business hauling for the A. and P., in interstate commerce.

Q. How long have you been in that business Mr. Hunt?

A. 18 years.

Q. Where was your business located?

A. At 611 Catharine Street.

Q. Philadelphia?

A. Philadelphia, yes.

* * * * * * *

The Court: Well, it is admitted that they hauled in interstate commerce.

* * * * * * *

N. T. page 9:

. . . . . .

Mr. Gray: There is no question, among other things, they hauled goods in interstate commerce.

. . . . . .

[fol. 27] N. T. page 9:

. . . . . .

The Court: He said there is an admission that they were engaged in interstate commerce.

. . . . . .

N. T. page 10:

. . . . . .

(Certified copy of order of the Interstate Commerce Commission No. M. C. 59793, application of Robert A. Hunt and Edward A. Hunt, a partnership doing business as Hunt's Motor Freight, was marked Exhibit P-1.)

. . . . . .

N. T. page 20; 21:

. . . . . .

Q. Now, Mr. Hunt, I have shown you the agreement which has been marked Plaintiff's Exhibit No. 3, the contract between you and the A. & P. for the year beginning March 10, 1938 which is set forth, if you will look upon that, for the term of one year. Did you haul merchandise and produce for the A. & P. during that entire year up to March 10, 1939?

A. No, we did not.

Q. When was the last time that you and your brother hauled any merchandise for the A. & P. Company under the terms of that contract?

A. Febraury 4, 1939.

Q. On February 4, 1939, or at any time prior to that, had the A. & P. given you any written notice or any other form of notice terminating your contract with it?

A. It did not.

. . . . . .

N. T. page 30:

By Mr. Zion:

Q. Mr. Hunt, were you able at any time after that [fol. 28] night to obtain any merchandise or produce of the A. & P. to load on your trucks and to move in interstate commerce?

A. No, sir, we were not.

* * * * * * *

N. T. page 50:

By Mr. Zion:

Q. * * * Whom did you see that day, Mr. Hunt? * * *

A. Ray Cohen.

Q. Where did you see Ray Cohen?

A. Outside on the pavement.

Q. Where?

The Court: 105 Spring Garden Street. He said he saw him outside the union headquarters.

N. T. page 50:

By Mr. Zion:

Q. State what conversation you had with Ray Cohen, then, that day.

A. I asked him why our men wasn't allowed to sign up with 107, and he said, well, he didn't want any of our men.

I said, "What are you going to do? They are truck-drivers. That is the only way they have of making a living."

He said, "That is their hard luck."

I said, "What are we going to do? If we can't get our men in the union we will go out of business."

He said, "Well, you are wising up to yourself. That is what we intend to do."

[fol. 29] N. T. page 51:

I said, "Is that your personal opinion or the opinion of anybody else?"

He said, "That is the opinion of the executive board," and he said, "That is what we intended to do all along, put you out of business."

At that time he walked inside.

N. T. page 52:

By Mr. Zion:

Q. Mr. Hunt, I show you papers which have been identified as P-5 and P-6, and ask you, first, if at any time after February 4, 1939, you received a formal notification from the A. & P. of the termination of your contract with that company?

A. Yes, we did.

N. T. page 53:

* * * * * * *

Q. The date you received that appears on the back of this registered mail envelope, February 28, 1939, is that correct?

A. Yes.

* * * * * * *

N. T. page 53-54:

Q. Up to the time you received the notice, had you had any complaint from any officer of the A. & P. of the type of service you rendered that company?

A. No, sir, we did not.

Q. Prior to that notice of February 28, 1939, during the entire 14 years of hauling produce and foodstuffs, for the [fol. 30] A. & P., had you ever received any notice of termination of your contract with that company?

A. No, sir, we did not.

Q. Prior to that time did your contracts renew automatically each year?

A. Yes, sir, they did.

* * * * * * *

N. T. page 54-55:

* * * * * * *

Q. Now, Mr. Hunt, after receipt of this notice on February 28, 1939, were you ever able to receive any other contract for hauling of any nature from the A. & P.?

A. From the A. & P., No.

. . . . . .

N. T. page 55:

. . . . . .

Q. Mr. Hunt, as a result of these efforts you made, were you ever successful in having this union accept you and your brother, or any of your men, in that union, or to make any contract as the agent for your men in that union?

A. No, sir, we were not.

. . . . . .

Francis M. Shaw—direct

N. T. page 274:

FRANCIS M. SHAW, being duly sworn, was examined and testified as follows:

. . . . . .

N. T. page 304:

. . . . . .

Q. Did you have any conversation with him then?

A. Yes, indeed. I said, "Mr. Cohen, when are we going [fol. 31] to sign up with 107?"

Q. Did you tell him who you were?

A. Oh, yes, indeed, I told him we were from Hunt's, and as soon as I said Hunt's why, bang, the old face dropped.

. . . . . .

N. T. page 305:

Q. What did he say, Mr. Shaw?

A. He said, "No, siree, we will have nothing to do with you."

I said, "You are not going to take us into the union?"

He said, "No, sir."

I said, "Is that your opinion?"

He said, "That is my opinion and also the Executive Board, Hunt's employees will not be admitted into this union."

• • • • • • •

Edward Klein—direct

N. T. page 363:

EDWARD KLEIN, having been first duly sworn, was examined and testified as follows:

By Mr. Zion:

• • • • • • •

Q. On November 6, 1939, what was your business?

• • • • • • •

A. Traffic manager.

Q. For whom?

A. For the Sterling Supply Corporation.

[fol. 32] N. T. page 364:

• • • • • • •

Q. Under the terms of that contract, did Hunt Brothers haul any merchandise for Sterling Supply Corporation?

A. Yes, they did for about 3 or 4 months.

Q. Did you ever give any formal notification, or was any formal notification ever given by your company to these plaintiffs, the Hunt Brothers, terminating that contract?

A. No.

Q. Did you ever have any conversation during the life of this contract with any officer or official or Local Union 107?

A. Yes, I did.

Q. About when was it?

A. Well, I don't quite remember. I do know that the contract was in force about 3 or 4 months, and at the end of that time when one of the union representatives called on me, I stopped giving Edwa.d Hunt freight.

• • • • • • •

N. T. page 365, 366, 367:

. . . . . .

Q. What was that conversation?

A. Mr. Kelleher called and introduced himself, that he is a representative of the union, and he told me that Edward Hunt and his drivers were non-union members, and that if we wished to avoid a lot of trouble, to stop using them.

Q. What did you say to that?

A. I wanted to know why those men couldn't become members, and Mr. Kelleher went on to explain to me that a fatal shooting took place, and for that reason they couldn't get into the union, and he pointed out to me that [fol. 33] that was another instance where a miscarriage of justice took place.

Q. Did you say anything further after that to him?

A. No, except that I would take his suggestion and I would get in touch with Edward Hunt and notify him that I couldn't use his equipment.

Q. Up to that time, had Mr. Hunt's services to your company been satisfactory?

A. Yes, they were.

Q. And that was the only reason you discontinued those services?

A. That's right.

Q. At that time you offered no further merchandise of your company to be hauled on that contract?

A. Not after we had that conversation.

Q. The contract was still in force at that time, was it not?

A. Yes.

Q. At the date you spoke to Mr. Kelleher, did Sterling Supply Corporation have any agreement with Local Union 107?

A. No, they did not.

N. T. page 368:

Edward Klein—cross

By Mr. Gray:

Q. Were you told that union men would not work with non-union men?

A. Oh, yes. . . .

The Witness: I did know that during that period, not with our particular company, but I did know that in other

[fol. 34] instances where non-union men attempted to make deliveries, they were not able to do so because of union conditions where union membership existed with other organizations, they were not able to load and unload, and when Mr. Kelleher called on me and talked with me and pointed out that if we wished to avoid a lot of trouble, to eliminate Edward Hunt and his operation, I immediately knew that we would have quite a bit of trouble if we continued to use them.

By Mr. Gray:

Q. That is, they couldn't work together with union men?
A. Well, even though that was not mentioned, that was not specifically said, that was my own deduction.

Robert D. MacIver—direct

N. T., page 415:

Robert D. MacIver, having been duly sworn, was examined and testified as follows:

By Mr. Zion:

Q. Mr. MacIver, what is your occupation?
A. I am in charge of the operating departments of the Atlantic Division, which takes in Scranton, Philadelphia, Baltimore, Washington and Richmond.
Q. Of the A. & P.?
A. Yes.
[fol. 35] Q. And you were so in charge in the warehouse in 1938 and 1939?
A. Yes, sir.
Q. How long have you been so in charge of those operations prior to 1939?
A. Since 1925.
Q. You know Robert A. Hunt and Edward A. Hunt?
A. Yes, sir. * * *

N. T., p. 416:

Q. In what capacity were they used by your company, Mr. MacIver?
A. As contract haulers in produce hauling. * * *

N. T., page 419:

Q. Mr. MacIver, during your conversations with any of the officials of Local 107 did the name of Hunt Brothers ever come into the conversation?

A. Yes, it did

N. T., p. 420:

Q. Can you state what was said by the officials of the union about Hunt Brothers, and what was said by you, and about when those conversations took place?

. . . . . .

The Witness: Well, we signed our agreement on December 13, 1938, and various times after entering into that I had my negotiations between the union and the tea company which were carried on with Mr. Cohen and Mr. Murphy. They were the business agents and looked after our tea company, and we had to have several meetings, and at several of those meetings I had asked them if they were going to take Hunt into the union.

. . . . . .

A. Between December 13th and the first of February.

. . . . . .

Q. Will you relate what those conversations were as they referred to Hunt Brothers?

. . . . . .

[fol. 36] N. T., page 421, 422:

The Witness: I had asked them if they were going to take Hunt into the union, and their answer was no.

Q. When did they first tell you they wouldn't take Hunt into the union, Mr. MacIver?

A. Well, I couldn't place a time on that, sir.

Q. Was it between December 13, 1938, and January 1st, 1939?

A. Yes, it would be between those dates.

Q. Did you ask them more than once or only one time?

A. I think I asked several times.

Q. And the answer each time was what?

A. They wouldn't take them in, sir.

Q. Had you had any conversations with any official of Local 107 immediately prior to the time that you gave the orders to De Lacy which were given to Mr. Collins that the trucks of Hunts were not to be loaded?

A. Yes, I was called by the union on the telephone * * *

Q. Will you please state what that conversation was, what was said by them to you, and so on?

A. That all of the contract haulers had now signed up with the union with the exception of Hunt Brothers, that they were not going to take Hunt Brothers into the union, and that, therefore, we could not use them any more.

By the Court:

Q. That was told to you on what date?

A. That was February 4, 1939. * * *

[fol. 37] N. T., page 422; 423:

Q. What did you answer to that, Mr. MacIver?

A. I said, "O. K."

Q. And that is why you gave the order not to load Hunt Brothers?

A. That is right, sir. * * *

N. T., page 423; 424:

A. I wouldn't hazard a guess on that, Mr. Zion. It was several years ago, and I made no record of the conversation, and, therefore, I have no way of knowing other than I knew the purport of it was we couldn't use Hunt Brothers any more, and, therefore, we got rid of them.

* * * * * * *

Q. Prior to that time you were already notified by them they wouldn't take Hunt in, prior to February 4th they told you they wouldn't take Hunt in?

A. Yes, true.

Q. They wouldn't give him a contract?

A. Right. * * *

N. T., page 428; 429:

Q. Mr. MacIver, did the union officials at any time during the year 1939 request that you dispense with the services of any other contract hauler than Hunt Brothers?

* * * * * * *

A. No, I don't think there were any others.

Q. Mr. MacIver, who gave the direction that the formal notice terminating Hunt Brothers or Hunt's contract with the A. & P. dated February 27, 1939, be mailed to Hunt Brothers?

A. I did.

Q. After February 28, 1939, did you have any conver-
[fol. 38] sations with any officials, officers or delegates or business agents of the local union 107 with reference to Hunt Brothers after February 28, 1939?

A. As I said before, I had dealings with them regularly, and at most of those times I brought up the question of Hunt. Whether it was after February 28th or not, I would not be able to swear, sir.

Q. Mr. MacIver, did you do anything as far as the local union 107 is concerned acting through or in contact with any of the officials of that union in an attempt to persuade them to accept Hunt Brothers into that union? • • •

A. Yes, as I testified before, I talked to Mr. Cohen, Mr. Murphy and Mr. Crumbock.

Q. Did you make any effort to have the union accept Hunt after February 28, 1939?

A. Yes, I think I did.

Q. How long a time after that—in other words, after Hunt Brothers' contract was terminated by you—how long a time did you still try to prevail upon the union to accept them into it?

A. I think probably for the next three or four months.

Q. Did they ever agree to do so?

A. No, sir. • • •

N. T., page 432:

Q. Was it your personal desire or a desire of your company at any time up to the present time to terminate the services of Hunt Brothers with your company? • • •

A. No, sir.

[fol. 39] R. D. MacIver—Cross.

N. T. page 460:

Q. Did the fact you sent them that notice interfere with your ability to handle your goods in interstate commerce?

My Zion: Note my objection.

The Court: Objection overruled.

The Witness: Affect it, yes, because there were seven trucks that had to be replaced. To that extent it affected us.

* * * * * * *

R. D. MacIver—Redirect.

N. T. page 465-466:

Q. Mr. Gray has questioned you at some length, Mr. MacIver, about the strike condition that existed at the A. & P. some time in 1937; when did that strike end?

A. We started normal operations again some time in August, I believe.

Q. Of 1937?

A. Yes.

Q. When that strike ended, were there any members of Local 107 Union who were employed by you at A. & P.?

A. Yes.

Q. And before that strike started, were there any——

A. Pardon me. May I change that? That were members of our contract haulers—no—but members directly employed by the Tea Company that I know of at that time. Do I make myself clear?

The Court: The A. & P. didn't employ any men who were members, but some of the contract haulers did?

* * * * * * *

The Witness: Yes, sir.

[fol. 40] N. T. page 466; 467:

Q. I understand, Mr. MacIver, that no employe of the A. & P. union during 1937 up to November, 1938, was a member of Local 107.

A. I could not definitely say as to dates, Mr. Zion, but to my knowledge in 1937 anyway, there were none of them members. Some time during 1938, they did join 107.

Q. But during that same period of time, men working out of the same warehouse for your contract haulers—some of them—were members of Local 107?

* * * * * * *

A. I believe that is right, sir. * * * Well, all of the grocery contract haulers, I believe at that time were mem-

bers of 107. At the produce warehouse, after the strike I believe that none of them were members of 107 until in February 1939.

Q. Mr. MacIver, after the strike ended some time in August, you say, of 1937, up until November, 1938, were there any other labor troubles that you had involving 107 at the A. & P.?

. . . . . .

(p. 468) A. I don't believe there were, sir.

N. T. page 479:

Q. Now, Mr. MacIver, up to the time of the termination of the Hunt Brothers contract did you consider them one of the more important haulers?

. . . . . .

N. T. page 480:

. . . . . .

The Witness: They and Murphy Freight were the two largest haulers or contractors we had in the produce warehouse. They are one of our largest haulers in the produce warehouse.

. . . . . .

[fol. 41] N. T. page 483:

Q. Mr. MacIver, assuming that Hunt's contract with your company would have continued, or have been renewed after March 10, 1939, and assuming that there had been no reason to affect your ability to continue that relationship with them as far as this union was concerned, would Hunts have received any benefit or have received the benefit of your change of contract hauling policy?

. . . . . .

A. The only way I can answer that is to say that all the haulers who are still with us benefited by that change.

N. T. page 484:

Q. And were it not for this arrangement that you had with the union or the direction of the union, as far as Hunts

are concerned, you have stated that they would still be with you; is that correct, Mr. MacIver?

A. Yes, sir.

E. CRUMBOCK—Cross.

N. T. page 573:

EDWARD CRUMBOCK, having been previously sworn, was recalled.

Mr. Zion: If the Court please, I now call upon Edward Crumbock as under cross-examination.

• • • • • • • • •

N. T. page 574:

• • • • • • • • •

Q. You are the boss, in other words?

A. Well, if that is the title, yes, I guess I am. They call me that anyhow.

• • • • • • • • •

[fol. 42] N. T. page 575:

• • • • • • • • •

Q. When you say you are the boss——

A. I am the person in charge of the organization.

Q. And you carry out the policies fixed by this Executive Committee?

A. Yes, sir.

Q. Is that what you mean?

A. Yes, sir.

• • • • • • • • •

N. T. page 577:

• • • • • • • • •

A. I am international vice-president of the teamsters' organizations of the entire country and Canada, and as international officer I am trustee of several local unions that are in bad shape. I have been designated—we give

the title as trustee—to straighten the affairs out, if that is what you mean.

• • • • • • •

N. T. page 578:

• • • • • • •

Mr. Zion: I think it is relevant that the action taken in this union would, through him, have effect upon other unions so it would make it impossible to get into other unions.

The Court: Mr. Gray,——

The Witness: I did not have this authority until just 1940. • • • All international unions, according to the Constitution, must be affiliated with the Teamsters' Council.

• • • • • • •

N. T. page 580:

Q. What is the jurisdiction of your organization as to membership?

A. Over general truck drivers and helpers, platform men, over-the-road drivers.

• • • • • • •

[fol. 43] N. T. page 581:

• • • • • • •

Q. Doesn't your union have special jurisdiction over what is known as over-the-road drivers?

A. Our proper title is Highway Truck Drivers and Helpers. I think that was the first organization of our international to be granted. In fact, we organized over-the-road trucking.

Q. When you speak of highway trucking, you mean over-the-road?

A. Over-the-road—interstate carriers.

• • • • • • •

N. T. page 585-586:

• • • • • • •

Q. Mr. Crumbock, in 1939 and '40, would it be possible for a man operating a truck in the Philadelphia area, who

was not a member of this union, to load or unload merchandise at a warehouse in Philadelphia?

The Witness: Yes.

Q. Was that the exception or the general rule, Mr. Crumbock?

A. I would say the exception.

Q. That was the exception.

A. Could I add to that, Your Honor?

The Court: Certainly.

Mr. Gray: Do you want to say anything in addition to that?

The Witness: That is not because of any ruling of the teamsters; that is because the warehouse people are organized and they won't receive non-union merchandise.

By Mr. Gray:

Q. The warehouse is organized, so it will not receive non-union merchandise?

[fol. 44] A. That is right.

Q. That means that there is a non-union worker on the truck; it is not the merchandise—it is the type of worker on the truck?

A. That is right.

* * * * * * *

N. T. page 611:

* * * * * * *

Q. Who made these notations opposite the various names that appear there, Mr. Crumbock?

A. Well, I guess it was Cohen and Murphy.

* * * * * * *

Q. And opposite the word "Hunt" is a word written "out" on both sides.

A. That is right.

Q. It was put in there either by Murphy or Cohen?

A. At my orders.

* * * * * * *

N. T. page 612:

* * * * * * *

Q. Mr. Crumbock, when was it decided that Hunt was out?

A. When he killed my—when he killed my man, so far as that was concerned.

Q. When he killed your man—did you see him kill your man?

A. No, I didn't see him kill my man.

* * * * * * *

N. T. page 613:

Q. When you speak about the killing, when did this happen? What was the date?

A. September 4th.

Q. What year?

A. 1937.

Q. September 4, 1937. Did your Executive Committee [fol. 45] meet as a whole and decide on that question?

A. No.

Q. When did your Executive Committee meet and decide?

A. They did not decide it.

Q. Who decided it?

A. I did.

Q. Anyone else?

A. I did.

Q. You were acting for your union, weren't you?

A. Still am.

* * * * * * *

N. T. page 614:

* * * * * * *

Q. And you mean that was a mental decision of yours made on September 4, 1937?

A. That is right.

Q. And you decided then that you would not accept them into the union?

A. That is right.

* * * * * * *

N. T. page 615:

Q. Did you talk to Mr. MacIver about Hunt getting into your union?

A. Yes, sir.

Q. Or rather, making a contract with your union?
A. Yes, sir.
Q. Mr. MacIver asked you to accept their contract with your union, didn't he?
A. That is right.
Q. When was that?
A. Oh, in February there—just when—the date——
[fol. 46] Q. During the negotiations with A. & P.?
A. Before, and after, and during.
Q. Before and after?
A. And during the negotiations.
Q. Who else beside MacIver asked you about making a contract with Hunt, as a bargaining agent with your union?
A. Some of Hunt's political friends.

* * * * * * *

N. T. page 616; 617:

The Court: He has already said the man tried to get in through MacIver of the A. & P.; that is all that is necessary. He stated as unequivocally as I have ever heard from the witness stand, that he would not let him in, and took full responsibility.

By Mr. Zion:

Q. Did you ever talk with the other delegates about Hunt?
A. I did.
Q. And they all agreed with you?
A. Yes, sir.

* * * * * * *

The Court: He says there was no Board meeting; he said he took it up with them informally; he accepts full responsibility for it. He says he did it.

By Mr. Zion:

Q. That was as director of the union—as the boss?
A. That is right. Still take the same action.

(p. 618):

Q. You still would not let him in, of course?
A. That is right.

* * * * * * *

N. T. page 619:

* * * A. No, I believe it was in 1938 that we organized [fol. 47] the A. & P. I am not just certain. Whenever we signed the contract with A. & P., that is when Mr. Hunt's case came to the foreground again.

Q. That is what I want to find out. Before that, there was nothing to decide as to whether he would enter into a contract with you, was there?

A. That is right.

* * * * * * *

N. T. page 624:

Q. Why did you say, Mr. Crumbock,—or why did you decide that anybody who worked for Hunt, as long as he worked for Hunt, you would not take in the union?

A. Because I would not deal with Hunt on negotiations by us of a contract; I would not sign a union agreement with him, and therefore we could not represent the people.

Q. You would not accept their men for that reason?

A. That is right. * * *

N. T. page 625:

Q. By the way, did you know the names of Mr. Hunt's employes in February, 1939?

A. Don't know them now.

Q. Did you have any objection to dealing with Mr. Hunt before September of 1937, or with Hunt Brothers?

A. No, we did not.

* * * * * * *

Q. Mr. Crumbock, I show you a letter dated July 15, 1937, which has been marked D-3. That is your signature to the letter?

A. That is right.

Q. Did you send the letter——

[fol. 48] A. May I read it? It is my signature. You are going to ask me a question about it?

Q. That is right; produced by your lawyer.

A. I wrote that letter.

Q. And did you send a similar letter to other produce contract haulers of A. & P. at the time you sent this to Hunt?

(p. 626):

A. I did.

Q. Did you receive an answer from any others than Hunt to this letter?

A. I believe all of them answered. In fact, they all answered identically, if I can recall the words of it.

Q. I show you a letter dated July 21, marked D-2, signed "Edward A. Hunt, Hunt's Motor Freight." Is that the answer you received to that letter?

A. I believe it is.

Q. And the letter you received from each of the other produce contract haulers was more or less identical to this letter?

A. That is right; you got the same wording. I think they all wrote it at the same time.

Q. Now, on July 15, 1937, how many of the people employed by Hunt's Motor Freight were members of your union?

A. I don't believe any of Hunt's were organized at that time.

Q. In this letter to Hunt you state: "All of your employes engaged in driving trucks are members of the Highway Truck Drivers and Helpers Local Union Number 107." That was not true, was it?

A. No, it was not.

* * * * * * *

[fol. 49] N. T. page 628; 629:

Q. Didn't anyone in your union notify Mr. MacIver, of A. & P., not to load Hunt's trucks after February 4, 1939?

A. That is right; we would not work if Hunt's trucks worked.

Q. Then you did notify them you would not work if Hunt's trucks worked?

A. That is right.

Q. You never so notified him as to any other hauler than Hunt, did you?

(p. 629):

A. No, I did not.

Q. You accepted into the union all other men who worked for other contract haulers after the contract was signed by A. & P. with the union—all except Hunt?

A. Eventually, yes, sir. * * *

N. T. page 631:

. . . . . .

Q. In February, 1939, or at any time in 1939, was Ray Cohen the business agent in charge covering the A. & P. contract haulers of the A. & P. warehouse?

A. Him and Murphy were in charge—not only Cohen but Cohen and Murphy.

. . . . . .

N. T. page 632:

. . . . . .

Q. By the way, who participated in negotiating the A. & P. contract for the union?

A. I did.

Q. Anyone beside you?

A. Mr. Cohen, Murphy, Mr. Gray.

. . . . . .

[fol. 50] N. T. page 632:

. . . . . .

Q. Mr. Crumbock, when was the first time you notified anyone representing the A. & P. during the negotiations that Hunt would have to be eliminated, that Hunt would not be accepted in the union or you would not give him a contract?

A. I guess it would be the first time I ever sat *sat* down with him. I don't know when that would be.

(p. 633):

Q. Was that as early as the fall of 1938?

A. I imagine in December, when I negotiated in Mr. Gray's office with Mr. Shimmat, from Chicago.

Q. December, 1938?

A. I think it was December, 1938.

Q. At that time you notified Shimmat you would not negotiate with Hunt?

A. Whatever the date was.

Q. Well, some time, we will say, in late fall, 1938, or December, 1938? Is that correct?

A. That is right.

* * * * * * *

Q. Were you familiar with the happening between Sterling Supply Corporation and Kelleher?

A. Yes, I believe I was.

Q. When was the first you heard of it? Did you direct Kelleher to go down there, and did he discuss it with you before he went down to Sterling Supply?

A. That is right.

By the Court:

Q. What is right?

A. He went down on my instructions.

[fol. 51] N. T. page 634:

Q. He went down on your instructions?

A. That is right.

Q. What were your instructions to him?

A. Not to work with non-union people down there.

Q. Wasn't it that you would not work with Hunt down there?

A. Well, all right.

Q. Hunt, you were after?

A. Well, Hunt—definitely Hunt.

Q. It was definitely Hunt?

* * * * * * *

A. That is right.

N. T. page 641:

Q. Had you ever permitted any of your men to work for Hunt Brothers after February 1, 1939?

A. After February 1, 1939, no.

* * * * * * *

N. T. page 643:

Q. Mr. Crumbock, after the contract was signed with A. & P., did you forget all the old sores?

Mr. Gray: Objected to as totally immaterial and irrelevant.

What is the difference anyhow? They didn't forget this one—didn't forget Hunt.

The Witness: No, sir; we won't.

The Court: I am convinced he doesn't like Hunt and did not like him after this deplorable incident in 1937, and that he still doesn't like him, and that is why he did not negotiate the contract.

The Witness: That is right.

. . . . . .

[fol. 52] In United States District Court for the Eastern District of Pennsylvania

Civil Action No. 1011

Edward A. Hunt and Robert A. Hunt, Copartners, Trading as Hunt's Motor Freight and Food Products Transport,

vs.

Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al.

Hirsh W. Stalberg, Esq., Peter P. Zion, Esq., Philadelphia, Pa., Attorneys for Plaintiffs.

[fol. 53] William A. Gray, Esq., Philadelphia, Pa., Attorney for Defendants.

Opinion—Filed October 30, 1942

Kalodner, *D. J.*

The issues having come to trial on Complaint and Answer, and having heard the testimony of witnesses and the argument of counsel, I make the following

Findings of Fact:

1. The plaintiffs are copartners trading under the name of Hunt's Motor Freight and Food Products Transport, with their principal place of business at Philadelphia, Pennsylvania.

2. For a long period of time prior to the filing of this Complaint, the plaintiffs were engaged in the business of hauling produce and foodstuffs.

3. For a period of about fourteen years prior to February 4, 1939, practically the sole business of the plaintiffs was to operate under contracts, both written and oral, with The Great Atlantic & Pacific Tea Company (hereinafter referred to as A & P), by the terms of which plaintiffs hauled and transported merchandise for the A & P.

4. From eighty to eighty-five per cent of the operations of plaintiffs described in Finding No. 3 were interstate from and to Philadelphia.

5. The defendant, Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America (hereinafter referred to as the Union) is an unincorporated association of drivers and helpers engaged in "over the road hauling" and is affiliated with the American Federation [fol. 54] of Labor. It is affiliated with numerous locals and subsidiary unions situated throughout the United States, each of which represents a separate branch or class of employees engaged in and about the loading and hauling of produce by trucks. Its main office is located at 105 Spring Garden Street, Philadelphia, Pennsylvania.

6. Sometime in 1937 the Union called a strike of the truckers and haulers of the A & P in Philadelphia for the purpose of enforcing a "closed shop".

7. The plaintiffs attempted to operate during the strike, and in July of 1937 refused the offer of the Union to negotiate.

8. The strike was attended with great violence and on September 4, 1937, one of the men connected with the Union was shot and killed at or near the Union headquarters.

9. One of the plaintiffs, Edward A. Hunt, was tried for the homicide described in Finding No. 8 and was acquitted.

10. On December 13, 1938, A & P entered into a "closed shop" agreement with the Union whereby A & P recognized the Union as the bargaining agent for its employees, as a result of which the various contract haulers who were similarly situated as the plaintiffs with the said A & P recognized the defendant Union as the bargaining agent for their employees.

11. As a result of the said agreement between the said A & P and the defendant Union, all employees of the various contract haulers situated as were the plaintiffs with the said A & P were notified that they were required to join and become members of the defendant Union.

[fol. 55] 12. At the time of the making of the "closed shop" agreement, A & P had been employing the services of some twenty-five haulers (including plaintiffs) who were using about forty-eight trucks. The plaintiffs had eight trucks.

13. All the haulers of A & P except plaintiffs joined the Union or made "closed shop" agreements with it.

14. Plaintiffs (after the "closed shop" agreement was made with A & P and the Union) attempted to make an agreement with the Union. The Union refused to negotiate, and still refuses to do so.

15. The Employees of the plaintiffs have attempted to join the Union, but were refused admission as long as they were employees of the plaintiffs.

16. On February 4, 1939, A & P at the instigation of the Union cancelled its contract with the plaintiffs as of March 10, 1939, on the ground that plaintiffs were non-union. The plaintiffs' services had otherwise been satisfactory.

17. From about November 6, 1939 to February 12, 1940 plaintiffs did interstate hauling for Sterling Supply Company of Philadelphia, but were compelled to desist under the same circumstances as accompanied the loss of the A & P contract.

18. The elimination of the plaintiffs' services did not in any manner affect the interstate operations of A & P or the Sterling Supply Company.

19. The business of plaintiffs has been destroyed by reason of the Union's refusal to negotiate with plaintiffs and the Union's unwillingness to admit plaintiffs and their employees into the Union.

[fol. 56] Discussion

This action is under the Sherman Anti-Trust Act (26 Stat. 209, 15 USCA Sec. 1) as amended by the Clayton

Act (38 Stat. 731, 15 USCA Sec. 15). The plaintiffs petition:

(1) that the Union be enjoined from refusing plaintiffs' employees admission to the Union;

(2) from interfering with plaintiffs' business;

(3) from boycotting plaintiffs and others who wish to deal with plaintiffs; and

(4) that the defendants be required to pay plaintiffs three-fold damages, together with costs, etc.

Defendants contend:

(1) that the Sherman Act is inapplicable;

(2) that this is a labor dispute and that plaintiffs have failed to comply with the provisions of the Norris-LaGuardia Act (47 Stat. 70, 29 USCA Sec. 101 et seq.); and

(3) that the Union has been justified in its conduct toward the plaintiffs and has the right to confer or deny membership as it sees fit.

The latter two contentions of the defendants raise some very interesting questions, but it is unnecessary to consider them, because I have come to the conclusion that under the decision of the United States Supreme Court in Apex Hosiery Co. v. Leader, 310 U. S. 469, 84 L. ed. 1311 (1940) and the cases which follow it, that there has been no violation of the Sherman Act.

Sec. 1 of the Sherman Act provides:

"Every contract, combination in the form of trust [fol. 57] or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . ."

In his opinion in the Apex Hosiery Co. case, from which I must generously quote, Justice (now Chief Justice) Stone points out, at pp. 490-491-492-493:

"* * * The legislative history of the Sherman Act as well as the decisions of this Court interpreting it, show that it was not aimed at policing interstate trans-

portation or movement of goods and property. The legislative history and the voluminous literature which was generated in the course of the enactment and during fifty years of litigation of the Sherman Act give no hint that such was its purpose. * * * It was another and quite a different evil at which the Sherman Act was aimed. It was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury.

"For that reason the phrase 'restraint of trade' which, as will presently appear, had a well-understood meaning at common law, was made the means of defining the activities prohibited." (pp. 494-495).

* * * * * * *

"The common law doctrines relating to contracts and combinations in restraint of trade were well understood long before the enactment of the Sherman [fol. 58] law. They were contracts for the restriction or suppression of competition in the market, agreements to fix prices, divide marketing territories, apportion customers, restrict production and the like practices, which tend to raise prices or otherwise take from buyers or consumers the advantages which accrue to them from free competition in the market. Such contracts were deemed illegal and were unenforcible at common law. But the resulting restraints of trade were not penalized and gave rise to no actionable wrong. Certain classes of restraints were not outlawed when deemed reasonable, usually because they served to preserve or protect legitimate interests, previously existing, of one or more parties to the contract.

"In seeking more effective protection of the public from the growing evils of restraints on the competitive

system effected by the concentrated commercial power of 'trust' and 'combinations' at the close of the nineteenth century, the legislators found ready at their hand the common law concept of illegal restraints of trade or commerce. In enacting the Sherman law they took over that concept by condemning such restraints wherever they occur in or affect commerce between the states. They extended the condemnation of the statute to restraints effected by any combination in the form of trust or otherwise, or conspiracy, as well as by contract or agreement, having those effects on the competitive system and on purchasers and consumers of goods or services which were characteristic of restraints deemed illegal at common law, and they gave both private and public remedies for the injuries flowing from such restraints." (pp. 497-498).

* * * * * * * *

"*Restraints on competition or on the course of trade in the merchandising of articles moving in interstate* [fol. 59] *commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.*" (pp. 500-501.) (Emphasis supplied.)

Applying the principles enunciated in the Apex Hosiery Co. case, I cannot see how the plaintiffs meet them. Assuming that there was a restraint on interstate commerce, the conduct of the defendants is not "shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition."

Indeed, whatever evidence exists is quite to the contrary —the operations of A & P and the Sterling Supply Company were not affected by the elimination of the plaintiffs and there was no evidence that the public was in any way affected.

The Apex Hosiery Co. case is followed by United States v. Hutcheson, 312 U. S. 219, and United States v. Gold, 115 F. 2d 236. In United States v. Local 807 etc., 118 F. 2d 684, the United States Circuit Court of Appeals held that the Sherman Act was inapplicable.

Plaintiffs attempt to distinguish the above cited cases on the ground that they all involve labor disputes, and that here such is not involved because the labor dispute had already come to an end when the alleged offenses were committed. Assuming that to be the case, I fail to see how that distinction makes any difference. The Apex Hosiery Co. case makes no such distinction. In fact, Mr. Chief Justice Stone says (p. 495):

> "A second significant circumstance is that this Court has never applied the Sherman Act in any case, whether or not involving labor organizations or activities, *unless the Court was of opinion that there was* [fol. 60] *some form of* restraint upon commercial competition in the marketing of goods or services * * *" (emphasis supplied.)

Apparently plaintiffs have misconstrued the statement (p. 500, supra):

> "Labor cases apart, which will presently be discussed, *this Court has not departed from the conception of the Sherman Act as affording a remedy, public and private, for the public wrongs which flow from restraints of trade in the common law sense of restriction or suppression of commercial competition.*" (Empasis supplied.)

The reason the Supreme Court makes this remark is that labor combinations might have a tendency to increase consumer prices, etc., and that the Sherman Act would be and was construed to cover them; the Clayton Act was enacted to clarify or remedy the situation for, as the Court says (pp. 502-503):

> "A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted, either because it was not thought to be unreasonable or because it was not deemed a 'restraint of trade.' Since the enactment of the declaration in Sec. 6 of the Clayton Act that 'the labor of a human being is not a commodity or article of commerce * * *' nor shall such (labor) organizations,

> or the members thereof, be held or construed to be illegal combinations or conspiracies in the restraint of trade under the antitrust laws,' it would seem plain that restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combina- [fol. 61] tions or conspiracies in restraint of trade or commerce under the Sherman Act."

Plaintiffs further attempt to distinguish the instant case on the ground that no legitimate labor objective is being sought by the Union's acts, and hence the interference with interstate commerce is direct and fundamental as distinguished from incidental. Again, assuming this to be so, there is no such distinction made by the Apex Hosiery Co. case, nor do the principles enunciated lend themselves to such distinction. In United States v. Hutcheson, supra, the Court said (p. 232):

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and illicit under Sec. 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

Of course, I am not passing here upon the question as to whether the plaintiffs can pursue other remedies. In this connection the following quotation from Swartz v. Forward Association, 41 F. Supp. 294, is particularly appropriate. In that case the plaintiff alleged that the defendants conspired to destroy his interstate business by a boycott. The Court said:

> "Reading the bill as a whole, there are no facts alleged which would bring the activities of the defendants within the prohibitions of the anti-trust laws. The injury complained of is a private wrong which we assume is remedial in some other court."

In the instant case there is no doubt that the plaintiffs have suffered a private injury. It is just as clear that they have failed to establish that there was prejudice to the [fol. 62] public interest by undue restraint of competition

or undue obstruction of the course of trade. As was stated in Appalachian Coals v. United States, 288 U. S. 344, 359; 77 L. Ed. 825, 829:

> "There is no question as to the test to be applied in determining the legality of the defendants' conduct. *The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor.*" (Emphasis supplied)

For the reasons stated I have come to the conclusion that the Complaint must be dismissed.

Accordingly, I state the following

Conclusions of Law:

1. The acts complained of do not constitute a violation of the Sherman Anti-Trust Act, as amended by the Clayton Act.

2. The plaintiffs' Complaint must be dismissed.

[fol. 63] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

[Title omitted]

MINUTE ENTRY—Feb. 11, 1944

And afterwards, to wit, the 11th day of February, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Albert B. Maris, Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 12th day of July, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 64] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

October Term, 1943

No. 8275

EDWARD A. HUNT AND ROBERT A. HUNT, Co-partners Trading as Hunt's Motor Freight and Food Products Transport, Appellants,

v.

EDWARD CRUMBOCH, President, JOSEPH E. GRACE, Secretary-Treasurer; William F. Kelleher, International Vice-President, Business Agent and Trustee; John Fisher, Business Agent and Trustee; Paul Pessano, David Davis, J. J. Murphy, Joseph Billington, and Charles Berwick, Trustees; Raymond Cohen, Business Agent, and R. J. Kelly, Business Representative and Recording Secretary of the Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, of America, and all persons forming the Total Membership of the Said Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America,

and

EDWARD CRUMBOCH, WILLIAM F. KELLEHER, JOHN FISHER, JOSEPH BILLINGTON and RAYMOND COHEN, Individually

Appeal from the District Court of the United States For the Eastern District of Pennsylvania.

Before Maris, Goodrich and McLaughlin, Circuit Judges.

[fol. 65] OPINION OF THE COURT—Filed July 12, 1944

By MARIS, *Circuit Judge:*

On this appeal we are called upon to determine whether the district court erred in concluding that the plaintiffs had failed to prove a cause of action under the Sherman Anti-Trust Act as amended by the Clayton Act (15 U. S. C. A. §§ 1-7, 15). The facts were found by the district court substantially as follows:

The plaintiffs are copartners trading under the name of Hunt's Motor Freight and Food Products Transport.

For a period of about fourteen years prior to February 4, 1939, practically the sole business of the plaintiffs was to transport produce and foodstuffs by motor truck for The Great Atlantic & Pacific Tea Company (commonly known as the A & P) under contracts, both written and oral, with that company. From 80% to 85% of this transportation was interstate from and to Philadelphia. The trade union defendant, Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, is an unincorporated association of drivers and helpers engaged in "over the road hauling" and is affiliated with the American Federation of Labor. It is affiliated with numerous local and subsidiary unions situated throughout the United States, each of which represents a separate branch or class of employees engaged in and about the loading and hauling of produce by trucks.

Sometime in 1937 the union called a strike of the truckers and haulers of the A & P in Philadelphia for the purpose of enforcing a closed shop. The plaintiffs attempted to operate during the strike, and in July of 1937 refused the offer of the union to negotiate. The strike was attended with great violence and on September 4, 1937, one of the men connected with the union was shot and killed at or near the union headquarters. One of the plaintiffs, Edward [fol. 66] A. Hunt, was tried in the Philadelphia courts for this homicide and was acquitted. On December 13, 1938, the A & P entered into a closed shop agreement with the union whereby the A & P recognized the union as the bargaining agent for its employees, as a result of which the various contract haulers who were similarly situated as the plaintiffs with the A & P recognized the union as the bargaining agent for their employees.

As a result of the agreement thus made between the A & P and the union, all employees of the A & P's various contract haulers were notified that they were required to join and become members of the union. At the time of the making of the closed shop agreement, the A & P had been employing the services of some twenty-five haulers (including plaintiffs) who were using about forty-eight trucks. The plaintiffs had eight trucks. All the haulers for the A & P except plaintiffs joined the union or made closed

shop agreements with it. The plaintiffs attempted to make an agreement with the union but the union refused to negotiate, and still refuses to do so. The employees of the plaintiffs have attempted to join the union, but were refused admission as long as they remained employees of the plaintiffs.

On February 4, 1939, the A & P at the instigation of the union cancelled its contract with the plaintiffs as of March 10, 1939, on the ground that plaintiffs were non-union. The plaintiffs' services had otherwise been satisfactory. From about November 6, 1939 to February 12, 1940 plaintiffs did interstate hauling for Sterling Supply Company of Philadelphia, but were compelled to desist under the same circumstances as accompanied the loss of the A & P contract. The elimination of the plaintiffs' services did not in any manner affect the interstate operations of the A & P or the Sterling Supply Company. The business of plaintiffs has been destroyed by reason of the union's refusal to negotiate with plaintiffs and the union's unwillingness to admit plaintiffs and their employees into the union.

[fol. 67] In the light of the district court's finding, which is supported by the evidence, that the interstate business of the A & P and the Sterling Supply Company was not affected by the discontinuance of the plaintiffs' services, in other words, that the two companies continued to transport the same quantity of produce, foodstuffs and other products in interstate commerce as they would have done had they renewed their hauling contract with the plaintiffs, it is self-evident that in that respect the plaintiffs have not made out a cause of action, since there was in fact no restraint of the trade or commerce carried on by the A & P and the Sterling Supply Company. Accordingly, the sole question for our consideration is whether the fact that the defendants' actions caused the plaintiffs to go out of business and to cease hauling in interstate commerce is such a restraint upon interstate commerce as to be cognizable under the Sherman and Clayton Acts. This question must be answered in the negative. Congress did not undertake by the enactment of the Sherman and Clayton Acts to prohibit each and every restraint upon interstate commerce. It sought to prevent only those restraints upon free competition in business or commercial transactions which tend to restrict production, raise prices or otherwise control the

market in goods or services to the detriment of the public. Apex Hosiery Co. v. Leader, 310 U. S. 469 (1940).

The Sherman Act, said Justice Stone in the Apex Hosiery Co. case, "was not enacted to police interstate transportation, or to afford a remedy for wrongs, which are actionable under state law, and result from combinations and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to 'monopolice the supply, control its price, or discriminate between its would-be purchasers.'" We must assume, for nothing to the contrary appears in the plaintiffs' case, that the number of haulers available to haul produce and foodstuffs was not diminshed but simply that some other hauling concern took over the work formerly performed by [fol. 68] the plaintiffs and that there was no increase in the cost of hauling traceable to the acts of the defendants in eliminating the plaintiffs from the field. It is in the public interest that the supply of commodities and services be undiminished and the cost not increased. From the standpoint of the public, however, it is immaterial whether the plaintiffs or others provide the services.

With the right of the plaintiffs to recover in some other action upon some other theory we have no concern. All that is before us is whether they have brought themselves within the purview of the Sherman Act, as amended. For the reasons already stated we agree with the district court's conclusion that they have not.

The judgment of the district court is affirmed.

[fol. 69] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8275

EDWARD A. HUNT and ROBERT A. HUNT, Copartners Trading as Hunt's Motor Freight and Food Products Transport, Appellants,

vs.

EDWARD CRUMBOCH, President of Brotherhood of Transportation Workers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al., etc.

Present: Maris, Goodrich and McLaughlin, Circuit Judges

JUDGMENT—Filed July 12, 1944

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

By the Court, Maris, Circuit Judge.

July 12, 1944.

[File endorsement omitted.]

[fol. 70] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 71] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—December 4, 1944

On consideration of the motion for leave to proceed herein *in forma pauperis*.

It is Ordered by this Court that the said motion be, and the same is hereby granted.

[fol. 72] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis. File No. 49,023. U. S. Circuit Court of Appeals, Third Circuit. Term No. 570. Edward A. Hunt and Robert A. Hunt, Co-partners trading as Hunt's Motor Freight and Food Products Transport, Petitioner, vs. Edward Crumboch, President, Joseph E. Grace, Secretary-Treasurer, William F. Kelleher, International Vice-President, Business Agent and Trustee, et al. Petition for a writ of certiorari and exhibit thereto. Filed October 9, 1944. Term No. 570 O. T. 1944.